

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

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5 In the Matter of:

6

7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 October 24, 2023

16 11:24 AM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: ALIANNA PERSAUD

1 HEARING re OMNIBUS HEARING

2  
3 HEARING re Doc. #831 Second Amended Notice Of Agenda

4  
5 HEARING re Doc. #775 Motion To Authorize Debtors To Enter  
6 Into New Lease Of Real Property And For Related Relief

7  
8 HEARING re Doc. #770 Application For Final Professional  
9 Compensation For Randall J. Newsome, Mediator, Period:  
10 5/1/2023 To 8/29/2023, Fee: \$57,000.00, Expenses: \$9,593.09

11  
12 HEARING re Doc. #684 Application For Interim Professional  
13 Compensation / First Interim Application Of Seward & Kissel  
14 LLP, Special Litigation Counsel To The Official Committee of  
15 Unsecured Creditors Period: 3/30/2023 To 5/31/2023, Fee:  
16 \$111,247.50, Expenses: \$1,854.36

17  
18 HEARING re Doc. #785 Third Motion To Extend Exclusivity  
19 Period For Filing A Chapter 11 Plan And Disclosure Statement

20  
21  
22  
23  
24  
25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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8 BY: SEAN A. O'NEAL

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12 WHITE CASE

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14 Creditors

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1 UNITED STATES DEPARTMENT OF JUSTICE

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20 BY: JOHN R. ASHMEAD

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2 Attorneys for Foreign Representatives of Three Arrows

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7 BY: ADAM GOLDBERG

8

9

10 ALSO PRESENT:

11 DEANDRA FIKE

12 BRADLEY LENOX

13 GREGORY LANDEGGER

14 JEFFREY D. SAFERSTEIN

15 DAVID SCHWARTZ

16 MIKE LEGGE

17 NEGISA BALLUKU

18 JADE DYER-KENNEDY

19 ASHLYN GALLAGHER

20 UDAY GORREPATI

21 TAYLOR HARRISON

22 MIRANDA HATCH

23 DIETRICH KNAUTH

24 KEN LUKASZEWSKI

25 JACK MASSEY

1 AKIKO MATSUDA  
2 KYLE MCKUHEN  
3 RICHARD CHESTER MINOTT  
4 TYLER OKADA  
5 KATIE ROSS  
6 SAMIRA SARAN  
7 JORDAN SAZANT  
8 RODNIKA CARTER  
9 PETER J. SPROFERA  
10 CATHY TA  
11 GEMMA TUNG  
12 MICHAEL WEINBERG  
13 LILY YARBOROUGH  
14 JOHN ZAKY

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1 P R O C E E D I N G S

2 THE COURT: All right. So with that, we're  
3 returning to the 11 o'clock calendar. Thank you, everyone,  
4 for your patience as you sat through the end of the 10  
5 o'clock calendar and learned more about state court  
6 proceedings and how to get a judgment.

7 And so, we're here for Genesis Global Holdco LLC,  
8 a Chapter 11 case. It's jointly administered. We'll start  
9 this morning's hearing, as we always do, by getting  
10 appearances. I recognize there are people in the courtroom  
11 and there are no doubt people on the phone as well. And so  
12 let's start by getting appearances from debtor's counsel.

13 MR. O'NEAL: Your Honor, Sean O'Neal, Cleary  
14 Gottlieb on behalf of the debtors.

15 THE COURT: All right. Good morning. And from  
16 the official committee?

17 MR. SHORE: Good morning, Your Honor. Chris Shore  
18 from White and Case here with my partner, Phil Abelson.

19 THE COURT: All right. Good morning. And from  
20 Gemini?

21 MR. FRELINGHUYSEN: Good morning, Your Honor.  
22 Anson Frelinghuysen, Hughs Hubbard Reed, Gemini Trust  
23 Company LLC.

24 THE COURT: All right, good morning. And from the  
25 ad hoc group?



1 MR. ROSEN: Good morning, Your Honor, Brian Rosen,  
2 Proscar Rose, on behalf of the ad hoc group.

3 THE COURT: On behalf of the fair deal group?

4 MR. AULET: Good morning, Your Honor, Kenneth  
5 Aulet of Brown Rudnick for the fair deal group.

6 THE COURT: All right. On behalf of the United  
7 States Trustee's Office?

8 MR. ZIPES: Greg Zipes with the US Trustee's  
9 Office. Good morning.

10 THE COURT: Good morning. On behalf of the joint  
11 liquidators of Three Arrows Capital?

12 MR. GOLDBERG: Good morning, Your Honor, Adam  
13 Goldberg of Latham Watkins on behalf of the joint  
14 liquidators.

15 THE COURT: Good morning. There are obviously, as  
16 there always are, quite a few other appearances. There's  
17 been an evolving situation on a number of the matters that  
18 were on the calendar for today. So you all are better in  
19 touch with who may want to speak or need to speak at today's  
20 hearing. So with that, I'll throw it open to any other  
21 appearances and I'll start with the folks in the courtroom.  
22 So let's anyone else in the courtroom wishes to enter an  
23 appearance?

24 MS. LIOU: Yes. Good morning, Your Honor, Jessica  
25 Liou from Weil Gotshal Manges on behalf of digital currency

1 group.

2 THE COURT: All right, good morning. Any other  
3 party who's here in the courtroom who needs to make an  
4 appearance? All right. Any other party who's on Zoom who  
5 needs to make an appearance?

6 MR. RIBEIRO: Good morning, Your Honor. Christian  
7 Ribeiro, Cleary Gotlieb, counsel for the debtors along with  
8 my colleague, Sabrina Bremer, Cleary Gotlieb, as well.

9 THE COURT: All right, good morning. Anyone else?

10 MR. ASHMEAD: Good morning, Your Honor, John  
11 Ashmead of Seward Kissel. I'm here behalf of my firm, which  
12 is special counsel to the official committee.

13 THE COURT: All right, good morning. Anyone else?  
14 All right. So I have a copy of, I guess it's the second  
15 amended agenda. And the change from the first amended  
16 agenda is to turn this into a hybrid hearing so that folks  
17 could come here this morning. And as I understand it, some  
18 things on the agenda have changed over time. So I thought  
19 maybe we could level set by having debtor's counsel explain  
20 what's on what's not on. And we can start with, with that.

21 And let me, before Mr. O'Neal chimes in, let me  
22 make sure everybody on Zoom can hear us all in the  
23 courtroom.

24 MR. RIBEIRO: Yes, Your Honor, sounds good here.

25 THE COURT: All right. Thank you very much. To

1 bore you with more information than you want to know, the  
2 microphones here in the courtroom are for amplification in  
3 the courtroom. They are not Zoom microphones. So we have  
4 separate micros for that. And occasionally that has led to  
5 people who have less knowledge of technical things to, to  
6 not quite realize when we have an issue. So -- but --

7 MR. O'NEAL Yes. Your Honor, it's a good  
8 introduction to me having been the one that turned the  
9 microphone off. Apologies.

10 THE COURT: All good. It's perfectly fine. There  
11 but with the grace of God go I. So, Mr. O'Neal, why don't  
12 you level set for purposes of today's hearing?

13 MR. O'NEAL: Certainly. I believe we have a few  
14 matters on the agenda. We obviously have the exclusivity  
15 motion. And we also have a few additional matters that some  
16 of the Cleary team members who are on Zoom will be  
17 presenting two motions as well.

18 We are not going forward with the Three Arrows  
19 Capital matters today as described in the agenda letter. We  
20 have reached an agreement in principle to resolve the Three  
21 Arrows Capital claims objections and related matters. We're  
22 currently documenting that settlement. Not prepared or able  
23 at this point in time to describe the terms of that  
24 settlement, but we will be doing that as soon as we, as we  
25 can.

1 THE COURT: And I assume that means -- I took it  
2 when I saw the agenda -- that you did need a ruling on the  
3 one matter where we had arguments and where I made comments,  
4 but I didn't make a formal ruling?

5 MR. O'NEAL: Correct, Your Honor. I believe  
6 you're referring to the Rule 2004 motion.

7 THE COURT: Correct.

8 MR. O'NEAL: And that is correct. It's our  
9 understanding that that is not going forward at this time  
10 and that there's no need for you to decide that. Of course,  
11 we are still documenting the settlement.

12 THE COURT: I'll put a pin in it for now. And if,  
13 if it needs to be ruled on, I'll rule on it, but I will put  
14 -- I'm close to being able to get an answer to you on that,  
15 but I'll hold off.

16 MR. O'NEAL: Certainly. We have learned in this  
17 case that agreement in principles do not always come to  
18 fruition. So we are hopeful that that will occur, but we  
19 will find out.

20 THE COURT: All right. Thank you very much. And  
21 so anything else on just sort of level setting and what  
22 we're here to do today?

23 MR. O'NEAL: No, Your Honor. I think that is, I  
24 believe that -- oh, and I believe Mr. Ashmead also has his  
25 fee application up for hearing as well.

1 THE COURT: All right. All right. And so let me,  
2 it's a good segue in terms of level setting, explain why  
3 we're here for a hybrid hearing. We've been doing largely  
4 remote hearings except for when we had someone sitting in  
5 the witness chair. It was something that I thought might be  
6 useful to the extent that there are times occasionally in  
7 cases where it's helpful to have a chambers conference. And  
8 by chambers conference, I mean a discussion off the record.  
9 Obviously, I'm not a mediator in the case, somebody else  
10 would have to mediate the case and somebody else has  
11 mediated part of the case because I'm the one who has to  
12 decide the issues. A chamber's conference is different. It  
13 allows the parties to talk, I think, candidly about issues  
14 in a way that sometimes it's helpful. I've used them on  
15 occasion. I don't use them a lot. I'm always sensitive to  
16 the issues about transparency and process in the sense that  
17 we don't want to ever exclude somebody, a party who's a  
18 party-in-interest from having a discussion about the case.  
19 And so we, we don't do it that way. But that said, I have  
20 found in my experience that there are times you can have  
21 much more frank conversations, outside the glare of  
22 potential publicity, in a chambers conference than you can  
23 have an open court hearing. So sometimes I just -- but I'm  
24 guided by the parties. The parties know the case better  
25 than, than I do. They know the dynamics of what's going on

1 and what's not going on better than I do. And I've  
2 certainly learned that when I was a lawyer that sometimes  
3 judges had bright ideas that were not necessarily in tune  
4 with where the case was. So I just make it as an  
5 opportunity if people think it's helpful. And I don't  
6 require it, but sometimes, again, it does -- you might think  
7 why if it's the same folks and you're not mediating and  
8 you're just discussing, what's the difference? But as a  
9 practical matter, it does lead to sometimes more candid  
10 conversations that can be helpful. So I'll start off with  
11 that. I'm happy to do that here today if parties think that  
12 would be useful, I'm happy to do it. If we're going to do  
13 it, I'm happy to do it at any point in the hearing: at the  
14 end, at the beginning, the middle, whatever works, but I'll  
15 be guided by what you all think. And with that, Mr. O'Neal,  
16 any thoughts?

17 MR. O'NEAL: Certainly. Your Honor, thank you for  
18 the suggestion. While it was not our suggestion, we think  
19 it's an excellent idea to have a chambers conference with  
20 respect to the exclusivity motion. And we have conferred  
21 with the people who are assembled in the courtroom, with  
22 their representatives and I don't believe there is any  
23 objection to proceeding on that basis. What I might suggest  
24 is, as a matter of efficiency, is that perhaps we can clear  
25 out the calendar of the kind of contested noncontroversial

1 matters, get those completed and then perhaps we could move  
2 forward with the chambers conference. And then after that,  
3 have the exclusivity motion here.

4 THE COURT: All right. That sounds eminently  
5 sensible. And you mentioned an important point that I did -  
6 - I neglected to mention is exclusivity hearings can be a  
7 particularly thorny issue in cases. We all have had cases  
8 where that becomes the flashpoint and sort of the host  
9 organism, so to speak, for fights about where the case is  
10 going and issues. And it -- they are expensive and they  
11 can, they're also capable of sort of repeating on a regular  
12 calendar basis and so they can be very inefficient. That's  
13 it. Everybody has their rights. But, but the fact that  
14 there are fights about exclusivity is, is one of those  
15 instances that does suggest sometimes that a chambers  
16 conference could potentially be useful. So that's one of  
17 the triggers. Again, this was, was something I wanted, was  
18 done at my initiative. Not any party, nobody reached out to  
19 me. We don't talk to people about substance ex parte. And  
20 so chambers reached out and then asked that all the parties-  
21 in-interest be looped in and told that that was the, the  
22 thought.

23 So with that, I think, unless anyone has any other  
24 ideas, let's go through the uncontested matters and get the  
25 calendar cleaned up. And then we can see where we are. So

1 Mr. Zipes.

2 MR. ZIPES: Yeah. Your Honor, my office doesn't  
3 object to the chambers conference. Just to make clear, my  
4 office didn't consent one way or the other to it. And we  
5 would just recommend that the parties agree to maybe one or  
6 two sentence summary of what, what happened at this.

7 THE COURT: Yeah, we -- that's exactly right.  
8 There's no, there's no desire to have what I call the Aaron  
9 Burr problem -- if you've seen Hamilton -- where someone  
10 feels they're outside the room where it happens and they  
11 have, they're a stakeholder and those issues are important.  
12 So that's exactly right. And so I think that's a good  
13 suggestion. So with that, we can turn to the uncontested  
14 part of the calendar. And I'm not sure who I should cede  
15 the podium to.

16 MS. BREMER: Good morning, Your Honor. Sabrina  
17 Bremer from Cleary Gottlieb Steen and Hamilton for the  
18 debtors. I will be presenting the first uncontested matter  
19 on the agenda, the debtor's motion for an order authorizing  
20 the debtors to enter into a lease of new -- of real property  
21 which was filed at ECF Number 775.

22 THE COURT: All right. Counsel, proceed.

23 MS. BREMER: Thank you. We filed one declaration  
24 with this motion, the declaration from the debtor's CEO,  
25 Derar Islim. We had asked that this declaration be admitted



1 to the record, Your Honor.

2 THE COURT: All right. Anyone have any objection  
3 to me admitting the declaration of -- could you say the  
4 first name again?

5 MS. BREMER: Derar.

6 THE COURT: Okay, Islim in support of this motion?  
7 All right. Hearing no response, I'm happy to receive it in  
8 support of this motion. Counsel.

9 (Islim declaration admitted)

10 MS. BREMER: Thank you. Thank you, Your Honor.  
11 Just to briefly go over the facts, the debtors currently use  
12 a commercial office space pursuant to a lease between the  
13 landlord and DCG. This lease will expire on November 30th,  
14 2023, and the debtors are seeking authority to enter into a  
15 new six-month lease of commercial office space. Under this  
16 new lease, Holdco will be obligated to pay \$27,000 per month  
17 and a security deposit also of \$27,000. The debtors  
18 anticipate that under this new lease, it will result in  
19 savings of approximately \$18,000 for Holdco and its  
20 subsidiaries.

21 The debtors believe that this is an ordinary  
22 course transaction but seek authority from the Court  
23 regardless. The debtors have decided in their sound  
24 business judgment that entering into the new lease is  
25 necessary for the continued administration of the debtor's

1 estate as many of the debtors employees continue to work on  
2 site and the new lease will result in savings as the debtors  
3 require less office space than they currently have. We have  
4 consulted with the committee on this motion and the motion  
5 and the order -- proposed order reflect comments from the  
6 committee and we received no formal objections. Unless you  
7 have any questions, Your Honor, we would ask that the Court  
8 enter the proposed order filed with the motion.

9 THE COURT: All right. Thank you very much for  
10 that recitation. Any party wish to be heard on this motion?  
11 All right, hearing no party either in court in person or on  
12 Zoom, I'm happy to grant this motion as the request of  
13 relief is an exercise of the debtor's sound business  
14 judgment. And just make sure we get an electronic version  
15 of the proposed order. And very nice to see you, counsel,  
16 pretending here today. Thanks so much. Next matter?

17 MS. BREMER: Thank you.

18 MR. RIBEIRO: Good morning, Christian Ribeiro --  
19 excuse me -- Cleary Gottlieb Steen and Hamilton, counsel for  
20 debtors. The second matter on the agenda, uncontested, is  
21 the first and final application of Judge Randall Newsom who  
22 was the court-appointed mediator in these cases for the  
23 period between May 1st and August 29th, 2023 as the Court is  
24 very well aware of the debtor's filed a motion for the  
25 appointment in April 2024 -- 2023. It's (indiscernible) at

1 ECF Number 279. Pursuing the mediation order, Judge Newsom  
2 got to work in preparing, reviewing pleadings, traveling to  
3 New York City to attend two mediation sessions which were  
4 scheduled, May 25th. After numerous extensions of the  
5 mediation period, Judge Newsom also presided over a two-day  
6 live media mediation session on August 16th and 17th in New  
7 York. The (indiscernible) Judge Newsom seeks this relief  
8 pursuant to Section 330 of the Bankruptcy Code, Order  
9 (indiscernible) 52. The application also includes certain  
10 write-offs including for research, copying expenses that he  
11 did not purchase through the estate. Judge Newsom,  
12 unfortunately, is not available today. He happens to be at  
13 another mediation session. But if you have any questions on  
14 the application, I'm happy to answer them for you or we can,  
15 we can ask the Judge Newsom to supplement the request but  
16 otherwise, we respectfully request entry of the order  
17 attached as Exhibit B to the application.

18 THE COURT: All right. Thank you very much. Any  
19 party that wishes to be heard on this application? All  
20 right. Hearing no response, including from the United  
21 States Trustee's Office, I'm happy to grant the application.  
22 The mediation has been the subject of, of some discussion  
23 here in court. Obviously, we all know it was going on with  
24 the hope of moving the case forward. And I find the  
25 application is entirely appropriate under the facts and

1 circumstances of the case and applicable law. Thank you  
2 very much, counsel.

3 MR. RIBEIRO: Thank you, Your Honor.

4 THE COURT: Next up?

5 MR. ASHMEAD: Your Honor, it's John Ashmead of  
6 Seward and Kissel, special litigation counsel to the  
7 committee. Our first interim fee application is the next  
8 item on the agenda. We were retained in April to provide  
9 discrete services to the committee as and when directed by  
10 lead counsel, White and Case. On September 6th, Seward  
11 Kissel filed its first interim application for the period of  
12 March 30 to May 31 as reflected in the affidavit of service  
13 at Docket Number 740. S and K timely filed or served the  
14 fee notice parties with the application notice of hearing.  
15 The objection deadline was October 17th at 4 p.m. We  
16 received no formal or informal objections or comments  
17 regarding the application. Through the application --

18 MAN 1: (indiscernible)

19 THE COURT: Someone's got a live line. Please,  
20 people are entitled to appear on Zoom, but those privileges  
21 can be revoked if it's appropriate. Mr. Ashmead, please  
22 proceed.

23 MR. ASHMEAD: Sure. Thank you, Your Honor.  
24 Through our application, we seek reimbursement of actual and  
25 necessary expenses incurred on behalf of the committee

1 including our fees in the aggregate amount of \$113,101.86.  
2 We were already paid \$88,998 in fees and \$1854.36 in  
3 expenses through the compensation period. We understand  
4 that Your Honor previously determined that at prior fee  
5 application hearing that we weren't involved in to continue  
6 the professional holdbacks until the final fee applications  
7 are filed. Just so, you know, our hold back amount of 20  
8 percent is \$24,076.86. We filed a CNO on October 19th at  
9 Docket Number 816, which contained a proposed order that we  
10 shared with your chambers in Word version. That proposed  
11 order, Your Honor, is consistent with the Court's prior  
12 determination on holdbacks. So unless Your Honor has any  
13 questions, we would respectfully request that you enter the  
14 proposed order, which finds are 80 percent of fees and 100  
15 percent of expenses are necessary and reasonable under the  
16 circumstances.

17 THE COURT: All right. Thank you very much. I  
18 did see the certificate of no objection filed at Docket 816.  
19 And so with that, let me ask if there's any party that  
20 wishes to be heard on this application?

21 MR. ZIPES: No, Your Honor.

22 THE COURT: All right. The US Trustee's Office in  
23 court just chimed in that they did not wish to be heard.  
24 Thank you for that. Any other party? All right. I guess I  
25 just did have one question, Mr. Ashmead, just for

1 understanding how your firm is, is working with White and  
2 Case and this is probably just a good sort of illustrative  
3 way to talk about it, is there, for the categories, there's  
4 a discussion about relief from stay. It's not a significant  
5 amount. It's, it's some 8.5 hours, but I'm just trying to  
6 understand the coordination of services among the two firms.

7 MR. ASHMEAD: Of course, Your Honor. We were  
8 brought in to be available with respect to, matters with  
9 respect to certain parties that could end up in litigation  
10 that, unfortunately for my firm, but good for good for the  
11 estate, has not ended up in litigation involving FTX and  
12 certain other parties where there could ultimately depend on  
13 what litigation happened in conflicts that might disable  
14 White and Case, although that did not come to pass. And  
15 just so Your Honor understands, for the last four months  
16 since the compensation period, I believe our total fees and  
17 expenses are less than \$50,000, although not submitted yet.

18 THE COURT: All right. Thank you. That, that's  
19 helpful. All right. I'm happy to grant the first interim  
20 fee application of your firm at the requested amount for the  
21 services for this period, finding it to be appropriate as a  
22 matter of the facts and circumstances of the case and  
23 applicable law. And thank you for the information. And we  
24 can move on to the next matter.

25 MR. O'NEAL: Your Honor --

1 MR. ASHMEAD: And, Your Honor, may I be excused?

2 THE COURT: Absolutely. Anybody who is here for  
3 those, the first couple of matters should definitely feel  
4 more than free to move on with the other things in their  
5 life. Thank you.

6 MR. ASHMEAD: Thank you, Your Honor. Have a nice  
7 day.

8 THE COURT: You too.

9 MR. O'NEAL: Your Honor, I believe that concludes  
10 the uncontested matters for today.

11 THE COURT: All right.

12 MR. O'NEAL: And so I, I believe that now we could  
13 move on into the chambers conference if you wish.

14 THE COURT: All right. So we have folks, I think,  
15 here from all the parties who have filed papers in  
16 connection with the exclusivity motion. And I think we also  
17 have other parties-in-interest who had an interest in being,  
18 participating in chambers conference. So I think we'll take  
19 a break. And so here's what I would suggest for folks on  
20 the line. The nice thing about Zoom is you can do other  
21 things with your, with your life. I will say that it's a  
22 quarter to 12. We'll, we'll start talking and one way or  
23 the other if we're not done before this, I'll make sure to  
24 give sort of an update at 12:15 so that people aren't sort  
25 of hanging in space not knowing where we are. So with that,

1 I'm going to mute my line but keep it open so people don't  
2 have to log off and log back on and thank you for  
3 everybody's patience and cooperation. All right, I think we  
4 can use that room right back there.

5 (Conference in chambers)

6 THE COURT: Hi, good afternoon. This is Judge  
7 Lane again. I just wanted to give a brief update. The  
8 parties are still chatting about various issues. I  
9 appreciate everybody's patience who's on the phone and are  
10 waiting. Thank you very much. I would expect we'd be about  
11 another 10, 15 minutes. So I will check back in at 12:30.  
12 Again, I appreciate everybody's patience and good humor  
13 about this. Thank you very much and talk to you soon.

14 (Conference in chambers continued)

15 THE COURT: Good afternoon. Once again, this is  
16 Judge Sean Lane in the United States Bankruptcy Court for  
17 the Southern District of New York. And we're here once  
18 again in the Genesis Global Holdco LLC case. We took a  
19 break to have a chambers conference and I thought it was  
20 appropriate and hopefully will be helpful to share a few  
21 observations about what was discussed.

22 So first, let me share the observation that it,  
23 it's very clear to me that all the professionals are  
24 operating in good faith. They're, they're trying to find a  
25 path for this case to go forward for everybody. They may



1 have differences of opinion about what that path is. But I  
2 just think in a case like this where there's, there's been  
3 some rhetoric that has been occasionally rather, a little,  
4 a bit elevated that it's important to understand that fact.  
5 I don't have any reason, I haven't seen anything in this  
6 case and I didn't see anything in our discussions now that's  
7 anything other than operating in good faith to try to figure  
8 out how to make a very challenging case work.

9 A couple of other observations. One is everyone  
10 agrees we had some discussion about the, the filing of the  
11 complaint by the New York Attorney General is a significant  
12 event in this case. It makes the degree of difficulty -- to  
13 use the Olympic gymnastics term -- higher for a resolution.  
14 But everything that is a challenge is also an opportunity  
15 and I think the professionals in the room on behalf of all  
16 clients are, are trying to view it that way. I think  
17 there's also, based on the papers that have been filed and  
18 the discussions in the room, sort of an emerging consensus  
19 that if, if parties can reach an agreement that works for  
20 everybody, great. That's the preferred path. But if they  
21 can't, that the No Deal Plan or some kind of a No Deal Plan  
22 with the details to be determined, is an appropriate backup.  
23 And people may agree, disagree, or agree about some of the  
24 details of it, but I think we all have the general idea of  
25 what that means.

1 And the last is sort of an observation I shared  
2 with the professionals of the room when we were talking, is  
3 again, I only see the part of the iceberg that's above the  
4 water line. And so I don't know the ins and outs, nor am I  
5 supposed to know the ins and outs. But it seems clear to me  
6 that there had been on a couple of occasions or run up to a  
7 settlement of various issues between various parties,  
8 various settlements that for whatever reason that I don't  
9 know, just didn't materialize. And it's hard for me to  
10 understand and it's not really my job to understand why that  
11 is in terms of deal terms. That's not what I'm talking  
12 about. But what I'm talking about is the ability for people  
13 to make commitments and for the lawyers to, to come to court  
14 and explain where things are. So let me just explain it  
15 from my perspective.

16 Lawyers who represent clients make representations  
17 on behalf of clients. I take those representations as the  
18 position of those clients based on that lawyer's statements.  
19 And so I just want to be very clear going forward, that's  
20 how the system works. If it doesn't work that way, nobody  
21 can get anything done. And it works that way for a reason,  
22 so people can rely on statements made by counsel. And so  
23 for purposes of the case going forward, and frankly for this  
24 case and any other case, if lawyers come up and they tell  
25 me, Judge, here's where we are; this is what we're willing

1 to do. We agree to this; we don't agree to that. That's  
2 how I take it. And that's how it's considered for purposes  
3 of going ahead in court. So it means that the, the tough  
4 work is done before you get here in that sense and that I  
5 rely on the professionals to tell me where things are. So I  
6 just want people to be very clear because there's obviously  
7 lots of steps often after things are said to court, said in  
8 court about papering deals and various things. But when  
9 lawyers come in and say they have deals or they have  
10 agreements that's, that's significant. And I take it on  
11 that, I take it at face value. And, otherwise we, we pretty  
12 much have anarchy, not only in large cases and small cases,  
13 in any case if people can't rely on the representations of  
14 counsel. So those are some of the things we talked about.  
15 And, again, I think everybody's operating in good faith  
16 trying to, to move a challenging case forward. And I do  
17 appreciate the hard work of, of all the attorneys who are  
18 here, who are working. Everybody is working zealously to  
19 represent their client.

20 And I guess there's one last observation is the  
21 folks who are here in, in this room, are lawyers that I've  
22 had the pleasure of seeing in other cases. And some, even  
23 if I haven't seen, it's pretty clear that they're all very  
24 good at what they do. And that's important. I say this in  
25 Chapter 13, individual bankruptcy cases. A lot of

1 bankruptcy is not intuitive. You can't necessarily figure  
2 out the challenges by, by sort of saying using your common  
3 sense. I know it sounds a bit awkward to say from a  
4 bankruptcy judge's point of view, but there are a lot of  
5 significant things that, that are there, whether it's the  
6 fact that, you know, the cost of the case comes out of  
7 recoveries because they are administrative expenses. There  
8 are a lot of things. And it's important to rely on  
9 bankruptcy professionals to get a sense of what those things  
10 are and how they impact your ability to move forward.

11 So I just encourage people because I know for some  
12 people they are now involved in the bankruptcy. They hoped  
13 never to be involved in the bankruptcy and this is not  
14 intuitive for them. They don't want to be here. I totally  
15 understand that. This is a problem, a challenge that we  
16 face in all cases. But I, I will say when I say in smaller  
17 individual cases under Chapter 13, Chapter 7, that's why you  
18 hire a lawyer. And so I would encourage you to get, to be  
19 attentive to the kinds of concerns that your lawyer  
20 identifies that, that may not strike you as something that  
21 you would have thought of before, before experiencing this  
22 case.

23 So with that, that's where -- that's sort of some  
24 of the comments that were passed along at the, at the  
25 conversation we had. Again, I thank everybody for their

1 patience and waiting on the, on the line and Zoom here for  
2 the hearing to resume. We have one matter left which is the  
3 exclusivity motion. But before we do that, I'm happy to  
4 hear from any other party who wishes to share any comment  
5 from our discussions.

6 All right. With that, I will turn the podium back  
7 over to debtor's counsel.

8 MR. O'NEAL: Thank you, Your Honor. Sean O'Neal,  
9 Cleary Gottlieb on behalf of the debtors. We're here today  
10 to request an extension of the exclusive periods for filing  
11 and soliciting a plan. We had asked for a 30-day extension  
12 from today until November 22nd, 2023.

13 We believe that an extension is warranted for a  
14 number of reasons. Courts typically apply nine factors.  
15 I'm not going to go through all of those nine factors, but I  
16 would like to focus on three of those factors with your,  
17 your court's permission: good faith progress on the plan,  
18 reasonable prospects for filing a viable plan, and the  
19 existence of unresolved contingencies.

20 So starting with good faith progress on the plan,  
21 we have been working, and I would say tirelessly, on several  
22 different work streams and several different versions of the  
23 plan. We have or had perhaps the Creditor Choice Plan,  
24 which was a modified version of the Toggle Plan which was  
25 intended to give creditors greater rights and protections,

1 but ultimately to give creditors the chance to express a  
2 preference between the what we call the No Deal Plan. That  
3 is a plan that does not provide for a settlement with DCG  
4 and just provides that we distribute our, our assets that we  
5 have available and then that would cause a litigation to be  
6 made in order to recover from DCG on account of a variety of  
7 different claims. That's the No Deal Plan. And then we  
8 also had the DCG Deal Plan, which was based on the agreement  
9 in principle.

10 So we have been working on that and we had tried  
11 to pull together protections including, you know, exploding  
12 ballots in the event that we didn't follow the creditor  
13 preferences, but we've now had to put that to the side. We  
14 put the Creditor Choice Plan to the side. And now, as we  
15 said in our reply, we are focusing solely on the No Deal  
16 Plan. That No Deal Plan, as I said, would basically  
17 distribute the assets that we currently have, set up a  
18 process by which claims against DCG and other parties could  
19 be pursued. Importantly under this No Deal Plan is we have  
20 proposed this would all be driven by a plan administrator  
21 who would be appointed and selected by the creditors and  
22 overseen by a new board, and an oversight committee  
23 comprised of a broad range of creditors, digital asset  
24 creditors, as well as dollar creditors. And basically, the  
25 plan administrator would pursue those claims.

1 Now, why did we, why did we switch from the kind  
2 of the Creditor Choice Plan to the No Deal Plan? And  
3 that's, it's relatively obvious, not an easy decision, but  
4 an obvious decision. That was forced upon us by the New  
5 York Attorney General's complaint. That complaint seeks a  
6 number of things, but one of the things that it seeks is to  
7 prevent DCG and Gemini from doing business in New York. And  
8 what that means is sitting here today, it was difficult for  
9 us to pursue a path, a plan where creditors were being asked  
10 to take a seven-year credit risk. That is the form of a  
11 loan from DCG to pay over \$830 million over seven years. It  
12 was difficult sitting here today for us to pursue a plan  
13 that, that relied on that with this New York Attorney  
14 General overhead.

15 In addition, we were not able to reach conclusion  
16 with the DCG team and with the creditors committee on the  
17 terms of the debt. Now part of that's related because of  
18 the, the New York Attorney General complaint. But we were  
19 unable to reach those, those terms, agreement on those  
20 terms. So that's why we have now, we have decided, we have  
21 determined to pursue the No Deal Plan.

22 We've been updating that No Deal Plan over many  
23 months. Your Honor may recall that a No Deal Plan term  
24 sheet was filed on Day 1 in this case. And then in June, we  
25 actually filed another, an actual No Deal Plan. So this is

1 not a new thing for us. It's just, it is updating it and we  
2 have been soliciting comments from the creditors. And we  
3 have an intent to file that No Deal Plan as early as, as  
4 tonight.

5 Now that said, I don't want folks to be confused  
6 about this. We believe that a reasonable settlement that is  
7 approved by the parties is the best way to go. We believe  
8 that that will provide for greater recoveries. And so we  
9 are, we are asking the parties-in-interest, particularly DCG  
10 and Gemini to work quickly because we have a closing  
11 opportunity to work quickly to try to reach a conclusion on  
12 a consensual deal that would be approved by the ad hoc  
13 group, by the creditors committee, and by the debtors. We  
14 don't have much time to do this. And we've been trying to  
15 do it, but we cannot stop the No Deal Plan to allow these  
16 discussions to end -- or to continue endlessly. So we want  
17 to put some discipline in the process and continue  
18 prosecuting the No Deal Plan, including at the November 7th  
19 disclosure statement hearing.

20 Aside from the plan, I think we've made other  
21 progress. We've been working tirelessly on a, on a  
22 distribution model. As Your Honor has heard before, there  
23 have been intercreditor issues about a distribution model.  
24 We want to be sure that we have a distribution model that  
25 works and is consistent with the bankruptcy code for the No



1 Deal Plan.

2 We want to try to maximize in-kind distributions  
3 while also recognizing the parameters of the bankruptcy  
4 code.

5 In addition, we've been engaged in pretty intense  
6 litigation with Three Arrows Capital liquidators. The goal  
7 there was to try to move as quickly as possible. In the  
8 event that we weren't able to settle the issue, we wanted to  
9 be able to have a judgment in time for us to, to obtain our  
10 confirmation timeline.

11 And, you know, we are also very happy to announce,  
12 as we announced yesterday in our agenda letter, that we've  
13 reached an agreement in principle with Three Arrows Capital  
14 and I mentioned that earlier today.

15 So we have made a fair amount of progress even  
16 outside of, of the plan. And I think even if you just look  
17 at reaching an agreement in principle on Three Arrows  
18 Capital alone, some would say that that would justify an  
19 extension of exclusivity.

20 In terms of whether or not we have a viable plan,  
21 at this point, the plan that we are pursuing is the No Deal  
22 Plan. And as I said, we're trying to file that as early as  
23 tonight. I've already described the content of that plan at  
24 a high level. It's exactly the kind of plan in terms of  
25 purpose, you know, that I think the ad hoc group and others

1 are seeking. There are going to be disagreements around  
2 certain aspects of that plan, but the basic gist of it, as  
3 I've described, distributing assets that we have, pursuing  
4 litigation against DCG and other parties, all under the  
5 supervision of a plan administrator, a new board, and an  
6 oversight committee, all appointed and comprised of creditor  
7 representatives. We're not even looking for control over  
8 that process.

9 We do believe that terminating exclusivity at this  
10 point in time would be bad. We're pursuing exactly the kind  
11 of plan that the objectors would pursue. That is the, the  
12 No Deal Plan. We do believe that giving that to a  
13 nonfiduciary at this point in time would be destabilizing  
14 and expensive and confusing for creditors and really  
15 ultimately serve no purpose because we are pursuing a No  
16 Deal Plan.

17 And again, I just want to be clear that we want to  
18 continue to encourage the parties to settle. We think it's  
19 incumbent upon DCG and Gemini to clear out the New York  
20 Attorney General complaint issues and any other regulatory  
21 issues that may arise. Even in a litigation process, even  
22 under the No Deal Plan, that needs to be resolved because  
23 otherwise, the estates will just be in a race against the  
24 regulators. We will have a wasting asset potentially. So  
25 regardless of whether we do No Deal Plan or settlement,

1 those issues need to be resolved.

2 I think the last point I would like to talk about  
3 is just unresolved contingencies. We have made progress on  
4 some of the big unresolved contingencies, right? We had the  
5 FTX issue and the settlement that we reached. We moved a  
6 claim or set of claims from 3.6 billion down to 1.75. And  
7 now we have the agreement in principle with Three Arrows  
8 Capital. But there remains unresolved contingencies. And  
9 one of the big ones, Your Honor, is potential disputes with  
10 Gemini and obviously potential disputes with DCG.

11 We've spent so much time in this court about the  
12 disputes with DCG but we haven't spent a lot of time about  
13 disputes with Gemini. And here the, the main unresolved  
14 contingency there is that back in August of 2022, Genesis  
15 delivered approximately 31 million shares of GBTC shares.  
16 That's Gray Scale Trust BTC shares. It's kind of a proxy  
17 for BTC, but not exactly. It's a trust that holds BTC. We  
18 delivered those shares and at the time that we delivered  
19 those shares, they were delivered to Gemini as agent for all  
20 of the earn users.

21 When we put the gates up, that is when we paused  
22 withdrawals and redemptions on November 16th, that is  
23 exactly the moment that Gemini purported to foreclose on  
24 those GBTC shares. At that time, I think approximate value  
25 of the shares was 284 million. Fast forward a few months

1 later, we had tried during -- right after November 16th, to  
2 reach a conclusion with our creditors and see if we could  
3 actually avoid this bankruptcy process through some kind of  
4 consensual deal. We weren't able to do that. And so we  
5 filed on January 19th.

6 At the time that we filed the cases on January  
7 19th, those GBTC shares were worth, valued -- and it's just  
8 a market value -- were valued at 354 million. So they moved  
9 from 284 million to 3 54 million. Today, those shares which  
10 continue to be held by Gemini, if you use Friday's prices,  
11 are valued at \$731 million. So as you can see, that is  
12 about a \$450 million increase from the foreclosure date.

13 And as we've always said, from Day 1, if you look  
14 at the first day declarations and some of the materials we  
15 filed, we've always disputed that foreclosure. We think  
16 that that was not a proper foreclosure, that a foreclosure  
17 did not occur, and that Gemini continues to hold those  
18 shares. They have not distributed those shares to the  
19 earned users. They are holding on to those shares. So we  
20 don't think there has actually been a foreclosure and this  
21 is in contrast to, to what others in the case have done.

22 So we say this, Your Honor, because this is an  
23 unresolved contingency that we're going to have to deal with  
24 probably in conjunction with or prior to confirmation. And  
25 you'll be hearing more about that I'm sure, not only from

1 us, but from Gemini's counsel as well.

2 So I would, I just want to, you know, I don't  
3 think we've spent a lot of time on that and I don't think  
4 that people understand all of the facts underlying what I  
5 just said. But we need to resolve that as well. It's not  
6 something that's going to happen overnight. We've been at  
7 this since really January trying to resolve those issues.  
8 And Your Honor may recall that in the February term sheet as  
9 part of that, what we did is we agreed, now this a non-  
10 binding agreement, but the agreement in principle that was  
11 followed with the Court said that we would use the petition  
12 date value, not the foreclosure date value. Roughly what?  
13 70 million, I think, change between the petition date and  
14 the alleged foreclosure date. So we agreed that we would  
15 use the petition date and then at that point in time, Gemini  
16 was going to put \$100 million into the into the deal. But  
17 only for earn users, just to be clear.

18 And so we have had lots of discussions and we've  
19 been, this was part of the mediation process. We were not  
20 able to reach a conclusion and we'll continue working on  
21 this, but we do need time, Your Honor, to do that.

22 So, with that, I think that that really concludes  
23 our presentation. We believe those three factors and all of  
24 the other factors suggests that really an extension of the  
25 exclusive period at least for 30 days -- I mean, honestly,

1 I'd like more, but we're not going to ask for more at this  
2 point in time -- for 30 days from, from today is  
3 appropriate.

4 THE COURT: All right, thank you very much. Let  
5 me hear from the committee, the official committee, and then  
6 I'll hear from the parties who filed objections.

7 MR. SHORE: Thank you, Your Honor. Chris Shore  
8 from White and Case on behalf of the official committee. As  
9 noted in our papers last night, we support a very limited  
10 extension of exclusivity, essentially a two-week extension  
11 to bridge us to the November 7th disclosure statement  
12 hearing. I'd like to make two points and be very brief and  
13 then discuss what we see as the proposed path.

14 First, building on comments Your Honor started  
15 with, the import of the AG action. Like it or not -- and  
16 people generally don't like it, and some people do -- the  
17 bankruptcy court is a court of limited jurisdiction as the  
18 Supreme Court keeps saying and it is really adept at dealing  
19 with dollars and cents issues. It gets harder when a party  
20 appears in a case, like the AG who has filed a proof of  
21 claim, but also starts actions in other courts, when they  
22 don't have dollars and cents at issues. And the bankruptcy  
23 court and bankruptcy processes tend to become more difficult  
24 by orders of magnitude when having to deal with parties who  
25 don't have dollars and cents at issue. And it rises in

1 other cases as well. It makes it even harder when the  
2 party, who doesn't have an economic stake in the outcome,  
3 purports to speak on behalf of those who do have an economic  
4 stake in the outcome. And as I'll explain in my second  
5 point, there's no doubt that if the AG prevailed on the AG  
6 action, every creditor will do worse in the context of  
7 distributions out of Genesis.

8 Let me explain that. My second point, there are  
9 only two paths out of this case and they need to be resolved  
10 immediately. One is a consensual path and as Mr. O'Neal  
11 just explained, a consensual path without the AG on board is  
12 exceedingly difficult because people are going to have to  
13 take tail risk on DCG and Gemini's continued operations in  
14 order to have an effectuated settlement. Neither of them  
15 have a sufficient liquidity right now to make any of these  
16 payments or make all of the payments necessary on the  
17 effective date of the plan.

18 I've said it before and I'll say it again, the  
19 deal that's on the table right now does not have creditor  
20 support. DCG and Gemini together in conjunction would have  
21 to come up with hundreds of millions of more dollars and  
22 we're going to have to get the AG on board with that  
23 resolution. There should be no reason why a party who's  
24 purporting to speak on behalf of victims would reject the  
25 victim's own consensual agreements to resolve their claims

1 in a difficult situation.

2 The other path out is the litigation plan, but to  
3 be clear -- and the reason we're talking about a short  
4 extension -- a litigation plan would mean or a No Deal Plan  
5 would mean a distribution of cash and crypto on hand to the  
6 extent permissible because the AG has taken, requested that  
7 certain actions not be permitted like the distribution of  
8 all coin and other crypto they believe to be a security. So  
9 it is unclear what an initial distribution would be.

10 Then there would be a literal race to judgment  
11 between the debtors here in their suit against DCG and the  
12 AG in their suit against DCG with that judgment needing to  
13 be obtained and executed on before the AG prevails on its  
14 claims. And by the way, everybody is speaking the same  
15 language about the wrongs committed by DCG and Gemini. So  
16 it's not like one party has a monopoly on the result. But  
17 that, that's what the litigation plan is. But if we're  
18 going to a litigation plan, we might as well get started  
19 because that action is filed. And we have an index number.  
20 No RJI has been filed, so we don't know the judge is, but  
21 that, that process is going to move forward. So creditors,  
22 to protect themselves, need to move forward.

23 That's why here's the four-part proposed plan that  
24 we, we kind of see being occasioned by this exclusivity  
25 hearing. I think debtors have to get on file immediately



1 the No Deal Plan. That is a plan that's currently supported  
2 by creditors. That is up for a disclosure statement hearing  
3 on November 7th. And in the absence of any change in the  
4 status quo, we need to get that up and out as quickly as  
5 possible.

6 The word came up and it comes up always in  
7 exclusivity hearings, I don't know why, but tirelessly,  
8 nobody ever uses that word in any other context, but it  
9 always gets applied to efforts. But truly here, the main  
10 parties-in-interest: the debtors, the committee, the ad hoc  
11 groups of creditors, DCG, and Gemini need to work tirelessly  
12 to get to a deal if one can get done.

13 Third, we show up on November 7th. One of two  
14 things happens. One, everybody or some large group of  
15 people get up and read into the record the deal in principle  
16 with DCG and/or Gemini, the state of the art at that point  
17 as to what they are willing to do outside of a No Deal Plan.  
18 As Your Honor expressed, that will bind people to some  
19 extent. People are going to have to be very clear about  
20 what the material terms are, what the conditions precedent  
21 are. Obviously resolution of the AG action may be a  
22 condition. So it doesn't have to be fully baked, but Your  
23 Honor needs to be able to have at that point a record as to  
24 whether or not a plan is -- a settlement plan is viable or  
25 not viable and whether the creditors wishes are not being

1 satisfied and whether the debtors are or not using  
2 exclusivity as a sword. All of those factors.

3 If on November 7th, parties don't show up with the  
4 settlement that they're willing to read into the record with  
5 sufficient support to cause the status quo to change, then  
6 we just go forward on the disclosure statement hearing on  
7 the No Deal Plan. The debtors will have, in the interim,  
8 made additional modifications to the disclosure statement,  
9 but we'll hear or Your Honor can hear any objections that  
10 exist to the disclosure statement with respect to the No  
11 Deal Plan. At that point, I think the exclusivity hearing  
12 becomes a nonissue because you'll have a deal on file that  
13 the debtors are prosecuting with the support of the  
14 creditors. And if there is a deal in principle, subject to  
15 documentation, we may have to do one additional adjournment  
16 of the disclosure statement with sufficient time to allow a  
17 plan to be amended, documentation to be done, with plan  
18 supplements to follow. And again, I think exclusivity  
19 becomes less of an issue because in that deal we posited,  
20 there is the support of the debtors, the UCC, the ad hoc  
21 creditor groups, DCG and/or Gemini with a path to move  
22 forward.

23 But terminating exclusivity today in the context  
24 of what has happened and the consequences to these debtors'  
25 estates with the additional layer of complexity with

1 multiple plans being on file, it should wait two weeks. And  
2 if we can get a deal done, great. And if not, as I said,  
3 we've got a plan that seems to be supported by everybody  
4 other than DCG and Gemini. And they'll have whatever  
5 objections they have at the disclosure statement hearing to  
6 the No Deal Plan.

7 THE COURT: Thank you very much.

8 MR. SHORE: You're welcome.

9 THE COURT: All right. Let me hear from the  
10 objectors. So I'll start with the ad hoc group.

11 MR. ROSEN: Good afternoon, Your Honor, Brian  
12 Rosen, Proskauer Rose, on behalf of the ad hoc group. Your  
13 Honor, as we make very clear in our papers, the ad hoc group  
14 represents approximately \$2.4 billion worth of claims  
15 against the debtors. These are a combination of USD and  
16 crypto or digital-asset-based claims as I think were the  
17 words that were used by Mr. O'Neal.

18 Your Honor, it's been that group that has been  
19 really working very, very hard the last few months to try  
20 and address the ongoing demands of both the debtors and the  
21 UCC to put forth a viable plan that is acceptable to the  
22 creditor constituencies. In that regard, Your Honor, one of  
23 the most telling points was to try and reach closure on  
24 something called the distribution model, which was  
25 referenced by Mr. O'Neal. And many, many hours were

1 undertaken to bring closure because of the difference of  
2 perspectives of USD and crypto-based creditors as to what  
3 they would be entitled to in either a deal or a no deal  
4 situation.

5 And, as we included in our papers, we believe that  
6 -- we know that there has been an agreement by the USD and  
7 crypto-based creditors on both a deal and no deal basis. I  
8 know that the debtors made comment in their papers that  
9 there was no understanding on a no deal scenario, but that's  
10 incorrect, Your Honor. As far as we know, and we represent  
11 the creditors who have said that we have reached an  
12 agreement, the dispute, unfortunately, has been raised by  
13 questions that have been brought to the forefront by the  
14 debtors and potentially the UCC, though we're not even sure  
15 about that. But clearly the debtors professionals are  
16 suggesting that it's not something that they would agree to.  
17 But I just want to be clear that the creditors have agreed  
18 on what the distribution should be between dollar-based and  
19 crypto-based claims.

20 It's because of the fact that this is a  
21 liquidation. It's a liquidating plan, Your Honor, and the  
22 debtors are but caretakers in this situation. They really  
23 need to listen to what the creditors have been seeking  
24 throughout the entire process. The creditors, led by the ad  
25 hoc group, have been making it very, very clear that -- and

1 certainly we filed something with the court, Your Honor --  
2 that the agreement in principle with DCG reached by the  
3 debtors and the UCC was not something that the creditors, as  
4 a whole, was supported. And it was based upon that, Your  
5 Honor, that we undertook to try and come up with something  
6 that would be acceptable to creditors.

7 We labored long and hard to try and come up with  
8 what we referred to as the revised proposal and that we've  
9 included in our documentation that we filed in the  
10 objection, Your Honor. And it was that revised proposal  
11 that we have already submitted to DCG. There's been  
12 comments made in the debtor's papers about nonbinding  
13 agreements. And what we've tried to do there, Your Honor,  
14 is tell the debtors and tell the UCC that based upon  
15 statements of support that we got from all of our  
16 constituency, they would not support the Toggle Plan or now  
17 rebranded as the Creditor Choice Plan and that they wanted  
18 to go forward in the event that there was no deal with DCG  
19 on a litigation only plan.

20 I don't know whether or not it's been our  
21 pleadings, our statements, our efforts to try and reach  
22 closure or it's the New York AG complaint that they cite to,  
23 that caused the debtor to morph over to the no-deal  
24 scenario. But we're happy that they have. At the same  
25 time, though, Your Honor, we have been advocating for an

1 agreement with DCG to the extent that one can be reached.

2 And we, of course, have left to the debtors at this point in  
3 time whether or not we could ultimately reach closure with  
4 Gemini although the creditor group as a whole, and I'm sure  
5 the UCC, has its perspective as to whether or not something  
6 could be reached with Gemini.

7 But, Your Honor, our greatest concern with respect  
8 to the motion which is currently before you today, is, are  
9 we going to go forward or is there going to be another lapse  
10 or is there going to be -- and I'll use the word that we've  
11 talked about before -- a backtracking here? We want to make  
12 sure that there isn't. We want to terminate exclusivity  
13 today. The debtor has told us that they're prepared to file  
14 a No Deal Plan today or this evening and we support that.  
15 And we've, in fact, given comments to that proposal and most  
16 of our comments, Your Honor, have been to illuminate the  
17 fact that the debtors are mere caretakers and that  
18 everything here is really creditor-dependent.

19 And in that regard, Your Honor, we've even  
20 suggested that the ad hoc group be co-proponents of that  
21 plan because we wanted to make sure that the debtors  
22 understood that the creditors are supportive of a No Deal  
23 Plan if one can be reached. And we believe, Your Honor,  
24 that addresses the exclusivity issue. There is no reason to  
25 continue the process if the debtor is prepared to file a

1 plan that has creditor support right now. That is the way  
2 we should be going, Your Honor. We should not be extending  
3 for 30 days more. We should not even be extending, as Mr.  
4 Shore suggests, two weeks more.

5 I understand that there's a very, very small  
6 window here to try and reach closure with DCG and Gemini.  
7 We support that. We've tried that process. We know we're  
8 waiting to hear back from DCG with respect to our proposal  
9 that we gave them, Your Honor. But if, in fact, we move  
10 forward on a joint proponent plan, that takes care of the  
11 exclusivity issue. We're moving forward on the No Deal  
12 Plan. If, in fact, something is done that promotes a  
13 settlement of all parties, of course we will support that  
14 because that is what we've already given to the debtors.  
15 That's already what we've given to the UCC. That's already  
16 what we've given to DCG.

17 So Your Honor on that basis, we would say, please  
18 do not extend further, whether it's two weeks or 30 days, or  
19 30 days or two weeks. Don't do it. The creditors' voices  
20 have been heard. They say they want to be involved in this  
21 process. Let's terminate exclusivity on the filing today  
22 and let the debtors file that plan or, more importantly, let  
23 us be co-proponents of that plan which deals with the  
24 exclusivity issue. Thank you, Your Honor.

25 THE COURT: All right. Thank you very much. Let

1 me hear from the other objecting party.

2 MR. AULET: Good afternoon, Your Honor, Kenneth  
3 Aulet of Brown Rudnick for the fair deal group. Your Honor,  
4 we are pretty happy with where things are today. We are  
5 very gratified to learn that the debtors are prepared to  
6 file a No Deal Plan that everybody can support.  
7 Unfortunately, it wasn't filed today.

8 There are details that matter in a No Deal Plan  
9 and we want to see what it is in that plan and make sure  
10 that there's nothing hidden that we can't support. But for  
11 one of those issues, I was very gratified to hear that the  
12 debtors are not seeking control of the post-litigation  
13 trust. I just like to reiterate Mr. Rosen's comments that  
14 we could have had a No Deal Plan on file that everybody  
15 could support. And I wish we had that today to avoid this  
16 hearing.

17 That said, to avoid repeating anything Mr. Rosen  
18 said, to the extent that the Court is inclined to extend  
19 exclusivity, we would also urge that it be for a very short  
20 time. A plan should be on file this week. Tonight would be  
21 great as long as it's a plan that all creditors are going to  
22 support. We don't want to be here on November 7th arguing  
23 about details about who should control the liquidating trust  
24 or anything else like that.

25 If we have such a plan, great. Let's go forward



1 on November 7th. And when it comes to a DCG deal -- and we  
2 signed on to the proposal made by the ad hoc group on what a  
3 deal with DCG could look like that would, we would support -  
4 - we would not urge the Court to allow a further extension  
5 on November 7th to get to a deal, however. We think that  
6 this needs to be put on a really tight clock. DCG can hit  
7 the bid by November 7th, get a deal that everybody can  
8 support, and get something that can be put on file with  
9 broad support with -- for a deal with DCG.

10 And if there's no deal with DCG, we are prepared,  
11 as Mr. Rosen's group is, to go to litigation. Obviously,  
12 the New York Attorney General's action complicates things,  
13 but we do not believe that it makes litigation a worse  
14 outcome here. We are prepared if DCG does not hit the bid,  
15 to go forward with litigation and believe that that would be  
16 the value maximizing solution here.

17 So in that respect, we urge the Court, if the  
18 Court is inclined to grant an extension of exclusivity, that  
19 it be conditioned on the filing of a No Deal Plan no later  
20 than the end of this month and it be extended only to  
21 November 7th when, if the plan is not broadly acceptable to  
22 the creditor body, we can have one final, hopefully,  
23 exclusivity hearing. Thank you, Your Honor.

24 THE COURT: Thank you very much. Any other party  
25 that wishes to be heard that has not yet been heard?

1 MR. FRELINGHUYSEN: Yes. Thank you, Your Honor.  
2 Anson Frelinghuysen, Hughes Hubbard and Reed, for Gemini  
3 Trust Company. We've covered already the exclusivity. I  
4 want to address some of the comments made by other counsel  
5 regarding what we see is an enormous gating issue to any  
6 plan moving forward, which is the determination of the size  
7 of Gemini's deficiency claim.

8 Mr. O'Neal talked about half of the collateral  
9 which valued at 730-ish million dollars. There's another  
10 half of the collateral as well, another 32 million shares of  
11 GBTC, another 730-ish million dollars altogether or close to  
12 \$1.5 billion of collateral that's at issue and needs to be  
13 resolved for any distribution plan to move forward.

14 Mr. Rosen, Mr. O'Neal have both discussed the  
15 existence of distribution plans and distribution agreements.  
16 Those have not been addressed with Gemini or agreed to with  
17 Gemini, even though Gemini represents somewhere between a  
18 third and a quarter of the entire estate's claimant  
19 population by value and 99 percent of its claimants by  
20 number.

21 These, these parties that are advancing a plan  
22 right now that are seeking either exclusivity or to be joint  
23 proponents are advancing a plan that funnels value away from  
24 retail lenders, the Gemini lenders, and directly towards  
25 institutional lenders that they represent. It is not an

1 acceptable outcome for Gemini. And it's one that we'll  
2 fight very hard. We've been working for months to -- with  
3 the debtors primarily -- to reach a resolution with respect  
4 to the collateral. We've not reached a resolution and we  
5 expect that it's likely going to require judicial  
6 determination.

7 I was glad to hear Mr. O'Neal say that we would be  
8 doing that on a schedule concurrent with plan confirmation.  
9 That sounds like the right schedule. We'll be engaging with  
10 him on that and with the court on that as well. I think  
11 that covers everything, Your Honor. Thank you.

12 THE COURT: All right. Thank you very much. With  
13 that, any other party that wishes to be heard?

14 MR. O'NEAL: Your Honor, if I could just close it  
15 out if you don't mind. I would just say just in, in terms  
16 of the statements of Gemini's counsel with respect to  
17 another bucket of GBTC shares, this was the reference I had  
18 spoken about, the shares that were delivered in August and  
19 then allegedly foreclosed upon in November. I think counsel  
20 is referring to an additional bucket of GBTC shares that  
21 were never delivered in November. There was a, there was a  
22 pledge agreement that was drafted, but the pledge agreement  
23 provided that the pledge would only apply upon delivery of  
24 those shares. And those shares were never delivered. And  
25 if we had delivered those shares in November, you would also

1 have before you, Your Honor, an avoidance action to seek to  
2 avoid the delivery of those shares because that would have  
3 been on an account of an antecedent debt.

4 So we have different views on that. We don't  
5 think that the -- I think if you look at their proof of  
6 claim, I think they characterize that additional 31 million  
7 shares is held within a constructive trust. And I think we  
8 all know when we go toward the constructive trust argument,  
9 what that normally means in bankruptcy court. So we'll,  
10 we'll leave that one to the side. That's an issue for  
11 another day.

12 But I, I do want to also make it clear, because  
13 it's important because people are listening, nobody's trying  
14 to take value from anybody. Nobody's trying to take value  
15 from the earn users. We're fiduciaries. We have an  
16 obligation, as does the committee, to maximize creditor  
17 recoveries for all creditors. And we have a bona fide  
18 dispute about how you treat the value of the collateral.  
19 And so, we'll deal with that later. That's not an issue for  
20 today, but I did just want to, to make those quick remarks.

21 I'm not going to respond to other things. There's  
22 always a lot of he said/she said. So we'll just kind of  
23 leave that to the side for now. But I do want to say, Your  
24 Honor, that we believe we really need 30 days. We believe  
25 that just extending it to November 7th isn't going to do

1 much for us because then on November 7th, we'll just be  
2 having the same exact argument we're having today. People  
3 can always terminate exclusivity, right? People can file a  
4 motion and they can seek to terminate exclusivity. But,  
5 Your Honor, I don't want to have to spend the estate  
6 resources doing another set of motions, having another set  
7 of objections for just a two-week extension. It does not,  
8 to us, seem to be a good use of, of the estate resources.  
9 If folks want to try to terminate, they can try to terminate  
10 and we can hear that on the, on the seventh. I think that's  
11 also a waste of time, but there's no reason to just give us  
12 such a short time frame. We are at this pivotal moment in  
13 this case. Either way, we have to resolve the New York  
14 Attorney General issues. Mr. Shore, as Mr. Shore said, it's  
15 equally relevant in the litigation world as it is in the  
16 settlement world. We urge the parties to use the next two  
17 weeks to try to get to a deal. But in the meantime, let's  
18 not argue over exclusivity. Let's try to get to a plan  
19 that's either -- we can continue the No Deal Plan. We will  
20 continue the No Deal Plan. We'll file it tonight. We can  
21 do that. But in the meantime, we urge everybody to continue  
22 discussions on the settlement and to do that very quickly  
23 because this train is moving and this train will be at the  
24 station on November 7th and it's going to be a No Deal Plan.  
25 So parties have only certain amount of time to try to reach

1 a settlement. Thank you.

2 THE COURT: Thank you. All right. I appreciate  
3 all the papers that were filed and all the argument of  
4 counsel and I'm prepared to make a ruling. I won't spend  
5 much time on the standard, which you all know, but I'll just  
6 summarize briefly the determination for cause to extend  
7 exclusivity under Section 1121(d) is a fact-specific inquiry  
8 and the Court has broad discretion extending or terminating  
9 exclusivity. See, for example, the most cited case on this,  
10 In Re Borders Group Inc, 460 B.R. 818, 821 through 22,  
11 (Bankr. S.D.N.Y. 2011). Among the factors that are looked  
12 at in determining whether to grant an extension of  
13 exclusivity are the three that were highlighted here:  
14 existence of good faith progress towards reorganization,  
15 whether debtor has demonstrated reasonable progress for  
16 filing a viable plan, and the third is whether unresolved  
17 contingency exists. The other ones that I think are pretty  
18 relevant here is the one on the size and complexity of the  
19 case and whether the debtor is paying its bills and whether  
20 it's made progress in negotiations with creditors and the  
21 amount of time that's elapsed. So those are also cited in  
22 the Borders case, which is cited In Re Adelphia  
23 Communications Corporation, 352 B.R. 578 at 587 (Bankr.  
24 S.D.N.Y 2006).

25 So the filing of the pleadings here demonstrate

1 progress towards reorganization and also relevant to the  
2 prospects of filing a viable plan and coordinate and  
3 cooperation among the estate and creditors. That is the  
4 debtors started out with a plan, small "p", in their initial  
5 motion and by the time they filed their reply, had moved to  
6 the No Deal Plan. And they have abandoned their efforts for  
7 whatever reason and people can take -- some people could  
8 take credit and maybe it's the New Yorker Attorney General,  
9 maybe it's the advocacy of various ad hoc groups, but it's  
10 on -- it doesn't -- I don't need to decide that. What I can  
11 see though is that the debtors have decided to proceed on a  
12 path as a backdrop that everybody can get behind.

13 And that's significant. In fact, everybody who  
14 just objected got up and said we support the No Deal Plan  
15 and we're happy to see it here. There may be some  
16 differences on the details, but the objecting parties were  
17 both happy to see it go forward. There was a request to  
18 say, well, let's get that filed before the of the month. I  
19 have the commitment stated on the record that it's going to  
20 get filed this week. So that's progress.

21 There's obviously also other progress. We've  
22 talked about the FTX settlement and the Three Arrows  
23 settlement, so there's clearly been progress. The No Deal  
24 Plan demonstrates reasonable prospects for filing a viable  
25 plan. There are unresolved contingencies. We've all been

1 talking about them. We know what they are. And I'm not  
2 going to repeat the recitation of them from the parties.

3 It's clearly a complex and large case. It's clear  
4 that there's sufficient time needed, I think, to file the No  
5 Deal Plan. And so I think it really comes down to whether  
6 the debtor is seeking an extension of exclusivity to  
7 pressure creditors to submit to the debtor's reorganization  
8 demands. I think that the change to a focus on the No Deal  
9 Plan, I think should resolve concerns about that. It should  
10 lower the blood pressure for people in the room when they're  
11 negotiating. Obviously, everybody agrees, we should leave  
12 open the possibility of a more global resolution. I would -  
13 - I'm not going to waste my oxygen explaining why that's a  
14 good idea because you all know it. I think you've all said  
15 it.

16 Now I will agree that this needs to happen  
17 quickly. And so at this point, we're sort of parsing time  
18 frames that are all short. My general approach in these  
19 circumstances is to grant the amount that people are getting  
20 behind here, November 7th, and then see where we are. I'm  
21 not anxious to wait -- waste estate resources. So what I  
22 will do is grant the debtors and the parties' ability to, if  
23 there is a need for additional time at that point, to make  
24 an oral application. You all have the papers. You've all  
25 explained your reasoning. You can supplement that orally at



1 the hearing on November 7th depending on where we are. No  
2 need to, to spend any more time and money. And that means  
3 that there really isn't a whole lot of downside to going  
4 ahead November 7th with the disclosure statement with the No  
5 Deal Plan.

6 If there are substantive issues on the No Deal  
7 Plan, there are substantive issues on the No Deal Plan.  
8 we'll deal with them in the fullness of time. But everybody  
9 agrees that that's the right step to take.

10 So a couple of things that I wanted to address  
11 that were comments that were made. One is, again, to loop  
12 back to the notion that I think everybody here is operating  
13 in good faith. I think the fact that the debtors have --  
14 are here where they are today based on the comments that  
15 have been made, I think, is evidence of that. I know for a  
16 lot of folks, there's significant financial hardship to be  
17 creditors here. This is a sad reality of a lot of  
18 bankruptcies, but the fact that it happens in a lot of  
19 bankruptcies doesn't make it easier or any less significant  
20 or painful in this one. And so we're all sensitive to that.

21 That said, it is my experience that litigation  
22 that is far flung in multiple jurisdictions among multiple  
23 parties in different lawsuits is, is not necessarily and  
24 usually not the best result. That doesn't mean you have to  
25 settle. Sometimes people settle; sometimes they don't. And

1       there's lots of reasons for that. I'm not here to judge  
2       that. I'm just here to urge the parties to continue to work  
3       as hard as they can in good faith to try to reach a  
4       resolution that can be presented at the November 7th  
5       hearing. I would suspect that that would be a, a good  
6       result. A settlement does mean everybody has to say ouch a  
7       bit, but we are all mindful that the cost of continued  
8       litigation in forums here and elsewhere will be borne by the  
9       estate and it means it's borne by the creditors. And these  
10      are novel issues, which means it's interesting for me as a  
11      judge to write opinions, but it means it's expensive for you  
12      all to litigate.

13               So I certainly urge people -- I think I'm  
14      preaching to the choir based on the comments here today --  
15      to continue to work as hard as possible in terms of trying  
16      to reach a resolution. And progress here in this case, I  
17      don't know exactly how that will impact the New York  
18      Attorney General case, but I, I can't imagine it will do  
19      anything but improve the prospect of that litigation, either  
20      being resolved or being handled in a more efficient and  
21      streamlined manner. It can only help. And I think with the  
22      New York Attorney General's office here, I think they would  
23      say the same thing because after all, if we're talking about  
24      getting resolution among creditors for the current  
25      circumstance, it just has to help by definition.

1           So you all hold the pen, though, right? You all  
2     have control of, of the narrative right now. The Attorney  
3     General case is recently filed. It's in its infancy. And  
4     like all litigation, it's uncertain. This case has  
5     progressed quite far. You all have had a lot of  
6     discussions. And at this point, I'm hopeful that there's a  
7     path forward that can make real meaningful progress for all  
8     constituencies in the case.

9           So there was a mention about wanting to make sure  
10    that going forward or backtracking here, I think everybody  
11    shares that concern. But again, I'm happy to make myself  
12    available in any way I can to help in any way I can short of  
13    I'm not here to mediate the case. That's not my job.  
14    Somebody else was doing that. And but to the extent that  
15    people think a conversation would be helpful, I'm happy to  
16    make myself available. And even if it's something as simple  
17    as saying, we want to essentially alert the Court where,  
18    where we are or what commitments we're willing to make so  
19    that everybody's clear on the record where people stand.

20          So I do think that proceeding on November 7th  
21    resolves concerns, I think, that still exist here. Again, I  
22    understand the estate not wanting to spend more time on  
23    filing papers, and so I'm going to relieve you of that  
24    burden. We'll handle it at the hearing because essentially  
25    I'll be getting that update anyway from folks and can make a

1 call based on the standards. So no need to, to kill any  
2 more trees or waste any more ink on that. You all are very  
3 good at what you do and I have every confidence you can  
4 update me in real time on that on the seventh.

5 And so with that, I think, those are, those are my  
6 comments and that's my ruling to extend exclusivity up to  
7 and including November 7th without prejudice for the debtors  
8 seeking additional time as is appropriate. And I will say  
9 as a practical matter, the debtors do need to file the New  
10 Deal Plan -- I'm sorry, the No Deal Plan. And that needs to  
11 happen. So it's clear that some additional time is  
12 necessary and I think the time up through the seventh is  
13 entirely appropriate for all the reasons that have been  
14 discussed here on the record today. Give me a minute to  
15 check my notes to see if there's anything else I wanted to  
16 address.

17 Okay. I think that covers it. I'm happy to  
18 address any more specific issues that anybody thinks would  
19 be helpful to address, but I think for purposes of making a  
20 ruling on exclusivity, that covers it.

21 MR. O'NEAL: Your Honor, Sean O'Neal, Cleary  
22 Gottlieb on behalf of the debtors. In terms of the  
23 exclusive period for the, for the solicitation, what is the  
24 date for that? I think November 7th is clearly the  
25 exclusivity for plan filing. Is there, what is the --

1 THE COURT: I don't have a calendar in front of  
2 me. I think it's two weeks. Right? Yeah. So do you have  
3 a suggestion? It's probably good to be absolutely  
4 positively clear on the record about this.

5 MR. O'NEAL: December 7th.

6 THE COURT: All right. December 7th sounds  
7 appropriate to me. Is that -- Mr. Rosen?

8 MR. ROSEN: Your Honor, that's fine. They had  
9 asked for 30 days after the November 22. So --

10 THE COURT: Yeah, I couldn't remember what was in  
11 the papers. Thank you for assist.

12 MR. ROSEN: Pearl Harbor Day is fine with me, Your  
13 Honor.

14 THE COURT: That's probably not something I want  
15 to invoke here today. I'm very confident that we're moving  
16 in the other direction.

17 MR. ROSEN: Your Honor, I did have a process  
18 point.

19 THE COURT: Sure.

20 MR. ROSEN: Our, our pleadings, Your Honor, were  
21 not only an objection, but it was also a cross-motion to  
22 terminate exclusivity.

23 THE COURT: That will be carried as well.

24 MR. ROSEN: That's fine. I just wanted to be  
25 clear.

1 THE COURT: Yeah. No, that's fair. Again, what  
2 I'm trying to do is preserve everybody's rights without  
3 anybody spending any additional time or money on this that  
4 might be otherwise spent in a more productive way.

5 MR. ROSEN: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. FRELINGHUYSEN: It's just a scheduling --  
8 Anson Frelinghuysen for Gemini Trust Company -- just a  
9 scheduling matter on when we need to oppose the disclosure  
10 statement if it's going to be published today for a hearing  
11 on November 7th, what's the timing for objections?

12 MR. O'NEAL: I believe that's already been set,  
13 Your Honor. It's one week before the hearing.

14 THE COURT: So that's the usual time.

15 MR. FRELINGHUYSEN: And usually we have more time  
16 though, with the disclosure statement. It usually is filed  
17 three weeks ahead, not two weeks ahead.

18 MR. O'NEAL: There has been a disclosure statement  
19 on file. We're updating, we're amending the existing --

20 THE COURT: I would think given where we are that  
21 a week should work because, again, I'm trying to free up  
22 time for people to focus on other things, but I'd say a  
23 week. And then so is November 7th a Wednesday --

24 MR. FRELINGHUYSEN: It's a Tuesday.

25 THE COURT: Tuesday.

1 MR. O'NEAL: October 31st is the existing date for  
2 the objection deadline.

3 MR. FRELINGHUYSEN: Also Tuesday.

4 THE COURT: Also Tuesday.

5 MR. O'NEAL: We're filing today.

6 THE COURT: All right. So the filing today and  
7 then the reply would be --

8 MR. FRELINGHUYSEN: I don't, I think we'd have to  
9 -- we had correspondence with your chambers on this. Let us  
10 just a second. I think we have that in here.

11 THE COURT: Sure. That's why I'm asking you. I  
12 know there's been some back and forth, but I confess, I  
13 haven't, I'm not completely up to date on that.

14 MR. FRELINGHUYSEN: I'm, I'm hoping that one of  
15 the associates who may be listening to these proceedings  
16 will be sending me an email.

17 THE COURT: All right. Well, also we can just  
18 pick something that makes sense now. So if it's Tuesday,  
19 one thing to do is to close the business on Friday. Monday  
20 gets a little dicey just because I don't quite know what the  
21 rest of the week looks like. And I try not to infringe  
22 anybody's weekend, although I recognize that's probably a  
23 bit of an artificial concern in the sense that you all --

24 MR. O'NEAL: So, Your Honor, the 3rd at 5 p.m.,  
25 would that be --

1 THE COURT: Is that the Friday?

2 MR. O'NEAL: Yes.

3 THE COURT: Yeah, that's fine. Absolutely fine.

4 MR. FRELINGHUYSEN: Thank you, Your Honor.

5 THE COURT: Nothing better to do with the weekend  
6 than to read about exclusivity. Oh, wait a minute. Oh,  
7 yeah. Even better. Even better.

8 MAN 2: Your Honor, that's how we've spending our  
9 weekends.

10 THE COURT: All right. Any other housekeeping  
11 matter or frankly anything at all to address here today?  
12 All right. Again, I appreciate folks all the time and  
13 effort and thought that's gone into this. Again, I am  
14 heartened by the very professional and candid good faith  
15 discussions among all the parties. I am cautiously  
16 optimistic that you all can make good progress between now  
17 and November 7th. And I will leave you with one thought.  
18 It is much better to create the results you want than to  
19 leave it to other forces. So with that, the Court is  
20 adjourned. Thank you very much. Good to see you all in  
21 person.

22 (Whereupon these proceedings were concluded at  
23 1:44 PM)

24

25



I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 25, 2023

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